

RECEIVED

DOCKET FILE COPY ORIGINAL JAN 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Calling Party Pays Service Option
in the Commercial Mobile Radio Services

)
)
)
)
)

WT Docket No. 97-207

To: The Commission

**REPLY COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group ("RTG"), by its attorneys, hereby respectfully submits these reply comments in response to the comments filed in the above-captioned proceeding. These reply comments support those commenters in favor of leaving the development of the Commercial Mobile Radio Service ("CMRS") Calling Party Pays ("CPP") option to the direction of the marketplace. Any regulation of CPP should be limited to standardizing billing methods and communications, as well as dispute resolution procedures, for those carriers who choose to offer CPP. These reply comments oppose arguments that CPP is strictly intrastate billing information and a practice that is within the jurisdiction of the states, and support comments contending that CPP is an interstate CMRS rate and entry issue that may only be regulated by the Federal Communications Commission ("FCC" or "Commission").

DISCUSSION

- I. **Any Rules to Address CPP Issues Should Be General in Nature and Apply Only to CMRS Providers That *Choose* to Offer CPP Based on Market Considerations**
 - A. **The FCC Should Not Attempt to Manufacture Local Exchange Competition That Will Develop On its Own**

RTG applauds the Commission for recognizing that the ability of CMRS providers to offer CPP to their subscribers could make wireless services more attractive. However, RTG agrees with

No. of Copies rec'd
List A B C D E

024

the Cellular Telecommunications Industry Association ("CTIA") that the impression left by the language used in the *Notice of Inquiry* ("NOI")¹ is that the Commission is primarily interest in CPP as a tool to foster local competition,² as opposed to an inherently worthwhile feature of CMRS that should be encouraged for its benefits to wireless customers. As indicated by other commenters in this proceeding, CPP is far from proven as a service option that will make wireless services more attractive or make consumers perceive that wireless services and wireline services are fungible. For CPP to play a role in increasing local exchange competition, it must result in customers perceiving such service as fungible. The United States Cellular Corporation ("USCC") realistically states that at the present time, cellular service is still perceived as a specialized service, not a substitute for wireline service.³ Cellular and Personal Communications Service ("PCS") are mobile services that the consumer selects *because* they are distinct from fixed service. Too many aspects of mobile service are vastly different from wireline service to expect CPP to blur the distinctions in the minds of subscribers.⁴

RTG submits that CPP, if available for provision by CMRS companies with the least amount of burden, will boost local competition in some markets and have no effect on competition in others. Based on the success or failure, or presence or absence, of CPP in any given market, there might be a correlative effect on competition in that market. RTG is concerned that the Commission might cling to the notion that CPP can and will promote local exchange competition, and thus go beyond

¹ *In re Calling Party Pays Service Option in the Commercial Mobile Radio Services, Notice of Inquiry*, WT Docket No. 97-207, FCC 97-341 (rel. Oct. 23, 1997).

² Comments of CTIA at 5 and n.10.

³ Comments of USCC at 2-3 and n.1.

⁴ For example, USCC mentions that cellular service lacks the directory assistance and number directories associated with wireline service. USCC Comments at 2.

the boundaries of prudent oversight to heavily regulate and/or require that CMRS providers offer CPP to their customers. RTG sides with market-oriented commenters, such as CTIA, BellSouth Corporation (“BellSouth”) and AT&T Wireless Services, Inc. (“AT&T”), *inter alia*, who are enthusiastic about the potential of CPP to boost the popularity of wireless services, but opposed to all but the most necessary regulation by the FCC. RTG requests that the Commission proceed with action on the implementation of CPP only from a standpoint of facilitating an option that can improve the success of wireless services as a class, not as a means to cloning a sibling for wireline telephone service. If the proper foundation of uniform federal regulation is put in place, one might see CPP add to the growth of local exchange competition as services such as fixed wireless emerge in the market.

B. The Commission Must Not Require CMRS Providers to Offer CPP If It Won’t Play in Peoria

None of RTG’s members has implemented CPP in their service territories, although several are considering a trial. RTG notes with interest the comments submitted by BellSouth and GTE Service Corporation (“GTE”), both of whom have initiated and eliminated the CPP option in the state of Hawaii. BellSouth found “a lack of consumer interest” in CPP, and “a lack of economic value for BellSouth.”⁵ BellSouth theorizes that CPP may have failed in Hawaii due to subscribers’ preference for a plan, under which the CMRS subscriber receiving the call pays for the call.⁶ GTE, whose wireless affiliate also offered CPP in the Oahu MSA, experienced similar consumer disinterest, which GTE blames on “customer perception problems.”⁷ GTE’s market research revealed that CPP was perceived by business subscribers as a deterrent to the placement of calls by

⁵ Comments of BellSouth at 3.

⁶ *Id.* at 4.

⁷ Comments of GTE at 8.

customers, and perceived by non-business subscribers as reflecting negatively on the subscriber who selects CPP (*i.e.*, that the subscriber would be deemed “cheap” by family and friends who feel the CMRS subscriber should bear the cost of incoming calls).⁸

RTG recognizes that one state’s experiences cannot form the basis for conclusions for all states, but the lack of success in implementing CPP in Hawaii does signify that there may be particular demographics in which CPP will not increase utilization of wireless services. For example, CPP may be a desirable option in markets with a high per-capita income level, and a deterrent to wireline calls placed to CMRS subscribers in lower-income markets.

The successful use by some carriers of alternative methods of increasing inbound calling further underscores the undesirability of mandating CPP. For example, USCC indicates its ratio of “inbound” to “outbound” calls increased from 2:5 to 4:5 when it implemented Caller ID and “first-minute free” for inbound calls.⁹ SBC Communications, Inc. (“SBC”) mentions that, in California, Pacific Bell Mobile Services (“PBMS”) is offering its PCS customers “first-minute-free,” Caller ID, and voice mail, with favorable results in balance of inbound and outbound calls.¹⁰ CMRS subscribers may find that they can exercise good control over their CMRS costs by using the first free minute of an incoming call to determine whether they wish to continue the call and pay for it, or end the call before charges accrue. Caller ID and voice mail provide the CMRS subscriber with similar control over cost--viewing the originating number of an incoming call allows the subscriber to determine whether he or she wants to answer the call and incur the charges, and voice mail allows the subscriber to determine whether a return call should be placed from a wireless phone or a

⁸ *Id.*

⁹ USCC Comments at 4.

¹⁰ Comments of SBC at 9.

wireline phone. Given the disparity in popularity and success that CPP could engender among the various states, and the existence of other CMRS service options that may be more attractive in certain CMRS markets, RTG urges the Commission to refrain from requiring CMRS to offer CPP. CPP and/or its alternatives, should instead be offered at the discretion of the individual CMRS provider based on its assessment of its own market conditions.

II. The FCC Has Regulatory Jurisdiction over CPP

A. CPP is a CMRS Service Subject to the Exclusive Jurisdiction of the Commission Under Section 332 of the Communications Act

RTG agrees with those commenters that maintain that CPP is a CMRS service subject to regulation only by the Commission pursuant to Section 332(c)(3) of the Communications Act of 1934, as amended (“the Act”).¹¹ CPP is a service function provided to a CMRS subscriber and paid for by a party other than the subscriber receiving the communication. CPP factors into the rates charged by CMRS providers. CMRS providers must determine the rates for their service based in part on the cost of offering CPP, including recovery of the cost of airtime for incoming calls and any fee levied by the entity (perhaps a local exchange carrier (“LEC”) or clearinghouse) performing the billing and collection for that airtime.

Both Congress and the courts have clarified that regulation of CMRS is the domain of the FCC. Congress has stated that Section 332 of the Act “establish[es] a Federal regulatory framework to govern the offering of all commercial mobile services,”¹² and Section 332(c)(3)(A) expressly

¹¹ 47 U.S.C. § 332(c)(3), *see, e.g.*, GTE Comments at 19-20; CTIA Comments at 14-15; AT&T Comments at 6; Comments of Vanguard Cellular Systems, Inc. (“Vanguard”) at 14-15; Comments of Sprint Spectrum L.P., d/b/a Sprint PCS (“Sprint PCS”) at 13-16.

¹² H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess.490 (1993).

preempts state authority to regulate CMRS rates.¹³ *Iowa Utilities Board v. FCC* clarifies that the Commission's authority over CMRS extends beyond the particulars of rate and market entry to the issuance of "rules of special concern to CMRS providers."¹⁴ Accordingly, beyond the fact that CPP constitutes both a service and a rate function protected by Section 332, CPP is of special concern to CMRS providers in that prohibiting its provision could in some instances impede the ability of a CMRS entity to effectively compete in the telecommunications market.

RTG agrees with other parties that the Commission's decision in *Arizona*,¹⁵ in which CPP was held to be a billing practice subject to state regulation, is no longer valid.¹⁶ The release of the *Arizona* decision predates the decision in *Iowa Utilities Board v. FCC*, and therefore the determination that CPP is merely a billing practice succumbs to the timely wisdom of the more recent and higher authority. While the Commission's classification of CPP as merely a billing practice may have been accurate *in 1995*, it must now be correctly classified as an element of CMRS service of special concern to CMRS providers, which may only be regulated by the Commission.¹⁷

¹³ 47 U.S.C. § 332(c)(3)(A) ("Notwithstanding sections 152(b) and 221(b), no State or local government shall have the authority to regulate the entry of or the rates charged by any commercial mobile service . . .").

¹⁴ 120 F.3d 753, 800 n.21 (8th Cir. 1997).

¹⁵ *In re* Petition of Arizona Corporation Commission to Extend State Authority Over Rate and Entry Regulation for All Commercial Mobile Radio Services, *Report and Order on Reconsideration*, 10 FCC Rcd 7824 (1995) ("*Arizona*").

¹⁶ Vanguard Comments at 16 n. 35; GTE Comments at 19-21; Sprint PCS Comments at 19.

¹⁷ Sprint PCS Comments at 19; GTE Comments at 19-21.

B. Should the Commission Determine that CPP is Strictly a Billing Practice, It Must Exercise Its Authority to Preempt Obstructive State Interference

In the unlikely event that the Commission finds CPP to be purely a billing practice subject to state regulation, it must recognize that CPP is intrinsically connected to a service that is interstate in nature.¹⁸ As such, the Commission holds the authority to preempt any state regulation that presents an obstacle to Congress's intentions for the development and proliferation of CMRS.¹⁹ As Vanguard notes, "even the CPP billing mechanism is subject to federal section 251 requirements as an unbundled network element and state-imposed CPP regulations would serve to eliminate the ability of CMRS providers to offer CPP."²⁰

Should the Commission decide to characterize CPP strictly as a billing practice, logically CPP should be treated as other LEC-CMRS inter-carrier issues such as LEC-CMRS interconnection under Section 332 (c)(1)(B) and Sections 251 and 252 of Act, which would give the Commission the authority to enforce the requirement that LEC-CMRS CPP arrangements be just, reasonable and non-discriminatory, and order LECs to provide the necessary billing information and collection services for CPP if they refuse.²¹ An inherently interstate telecommunications service cannot survive under a patchwork quilt of state regulation. RTG also agrees with GTE that, if this is the route the Commission takes, it should initiate a separate proceeding to specifically consider the issues associated with LEC CPP obligations.²²

¹⁸ Comments of Airtouch at 22.

¹⁹ CTIA Comments at 18 (citing *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 360, 374 (1986); *National Ass'n of Regulatory Utility Comm'r v. FCC*, 746 F.2d 1492, 1498 (D.C. Cir. 1984)).

²⁰ Vanguard Comments at 16 n. 35.

²¹ 47 U.S.C. § 332(c)(1)(B); 47 U.S.C. §§ 251, 252.

²² *Id.*

III. CPP Regulation Should Be Nationally Uniform And Minimal

A. National Consumer Protection Rules

RTG urges the Commission to adopt, based on industry consensus, a uniform method of informing consumers that calls placed to CPP-option subscribers will be billed to the calling party. A knowledgeable calling public is critical to consumer acceptance of CPP and LEC willingness to cooperate in its implementation. As GTE's experience in Hawaii indicates, CPP may be negatively perceived by calling parties who are conditioned to expect the CMRS subscriber to cover the cost of incoming calls.²³ In addition, LECs express concern that their wireline subscribers will be confused over the presence of a CPP charge on their wireline phone bills and assume it is an additional charge being levied by their LEC.²⁴ RTG agrees with Vanguard and CTIA that the CMRS provider should bear the responsibility of providing customer notification of CPP.²⁵ The wireless industry should work to devise a single, recognizable tone that will signify, nationwide, that a call has been made to a CPP-option subscriber. This notification method is preferable to the use of dedicated NXX prefixes, which are expensive for the carrier, cumbersome for the calling party, and in short-supply.

CTIA recommends that the distinct notification tone be initiated with a supplemental intercept message, for a period of 18-24 months, which would educate nationwide callers about the meaning of the tone.²⁶ As Sprint PCS mentions, however, an intercept message requires Advanced

²³ *Id.* at 8.

²⁴ *See generally* Comments of Bay Springs Telephone Company, *et al.* at 7.

²⁵ Vanguard Comments at 9-10; CTIA Comments at 8.

²⁶ CTIA Comments at 7-8.

Intelligent Network (“AIN”) capabilities,²⁷ which, even if available, are expensive to deploy. According to GTE, most CMRS providers can access AIN capabilities through a third-party vendor, such as an incumbent LEC, competitive LEC, interexchange carrier, or enhanced service provider.²⁸ For small and rural carriers, however, such capabilities are often unavailable. CMRS carriers should bear the responsibility of educating callers about the meaning of the unique CPP tone. Those carriers that cannot accommodate an intercept message will have to implement an alternative educational tool. At the end of a specified time period, which should be determined by the wireless industry in conjunction with the Commission, the unique tone should be fully functional and recognizable on a nationwide basis.

B. Standardized Billing Methods and Dispute Resolution Procedures

RTG maintains that CMRS providers must retain the ability to choose how charges for the CPP option will be billed and collected. CMRS providers must be free to bill and collect for CPP on their own, have billing and collection handled by the various LECs that originate calls, or utilize the services of a clearinghouse, such as the service being advanced by Illuminet, Inc. (“Illuminet”). CMRS providers that choose to have billing and collection handled by LECs must be able to rely on standardized billing and collection methods in order to have efficiency and reliability in their own accounting records, as well as good consumer acceptance of the CPP option. All LECs must be required to bill CPP calls, and do so in a universally recognized manner on their subscribers’ telephone bills. As CPP becomes more widely deployed, consumer recognition and acceptance of the option will grow. CPP is like any other telecommunications service that appears on a monthly LEC bill, including long distance charges from dial-around calls to Internet access. Standardization

²⁷ Sprint PCS Comments at 11.

²⁸ GTE Comments at 4.

of the billing and collection method by LECs will speed consumers' familiarity with the service.


The Commission must also adopt standard dispute resolution procedures to effectively address any problems that arise between CMRS carriers and LECs with respect to cooperation in the implementation of CPP. The ability to quickly resolve disputes involving the ability of a CMRS carrier to offer CPP will hasten the introduction of CPP nationwide.

CONCLUSION

CPP is a CMRS service offering that has the potential to grow the wireless telecommunications industry. It will only do so, however, if its development and implementation are left to the wireless industry. For the foregoing reasons, RTG respectfully requests that the Commission undertake a rulemaking to adopt broad uniform regulations that will assist in the implementation of CPP for those CMRS carriers who choose to offer it.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP

By: 
Caressa D. Bennet
Dorothy E. Cukier

Bennet & Bennet, PLLC
1019 Nineteenth St., N.W., Suite 500
Washington, D.C. 20036

Its Attorneys

Dated: January 16, 1998

Certificate of Service

I, Jacqueline Jenkins, an employee in the law firm of Bennet & Bennet, PLLC, hereby certify that a copy of the foregoing Reply Comments of the Rural Telecommunications Group, have been served, via first-class, U.S. postage-prepaid mail on the following, this 16th day of January 1998:

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Commissioner Harold W. Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Michael K. Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Ari Fitzgerald
Legal Advisor to Chairman Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Peter A. Tenhula
Legal Advisor to Commissioner Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Karen Gulick
Legal Advisor to Commissioner Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

David R. Siddall
Legal Advisor to Commissioner Ness
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Steve Kaminer, Legal Advisor to
Commissioner Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

David Krech, Esquire
Policy & Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
2100 M Street, N.W., Seventh Floor
Washington, D.C. 20554

Daniel Phythyon, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Rosalind Allen, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

David Furth, Chief
Communications Wireless Division
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

John Cimko, Jr.
Chief, Policy Division
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Nancy Boocker
Policy Division
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Michael F. Altschul
Cellular Telecommunications Industry
Association
1250 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20036

Kurt A. Wimmer
Robert A. Long
Niranjan Arasaratnam
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
Counsel to Sprint Spectrum L.P.

Jonathan M. Chambers
Roger C. Sherman
Sprint Spectrum L.P.
1801 K Street, N.W., Suite M-112
Washington, D.C. 20006

Raymond G. Bender, Jr.
J.G. Harrington
Laura S. Roecklein
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W., Suite 800
Washington, D.C. 20036
Counsel to Vanguard Cellular Systems, Inc.

James U. Troup
Aimee M. Cook
Arter & Hadden LLP
1801 K Street, N.W., Suite 400K
Washington, D.C. 20006
Counsel to Bay Springs Tel. Co., Inc., et al.

Cathleen A. Massey
Douglas I. Brandon
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W., Suite 400
Washington, D.C. 20036

Howard J. Symons
Sara F. Seidman
Michelle M. Mundt
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo
701 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20004
Counsel to AT&T Wireless Services, Inc.

Robert M. Lynch
Durward D. Dupre
One Bell Center, Room 3524
St. Louis, MO 63101
Counsel to SBC Communications, Inc.

Nancy C. Woolf
Jeffrey B. Thomas
140 New Montgomery Street, Room 1529
San Francisco, CA 94105
Counsel to SBC Communications, Inc.

Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036

Peter M. Connolly
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel to U.S. Cellular Corporation

William B. Barfield
Jim O. Llewellyn
BellSouth Corporation
1155 Peachtree Street, NE, Suite 1800
Atlanta, GA 30309-2641

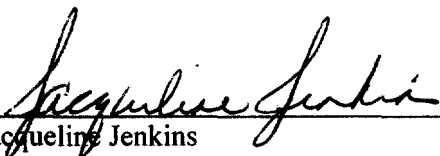
David G. Frolio
BellSouth Corporation
1133 21st Street, N.W., Suite 900
Washington, D.C. 20036

Jay C. Keithley
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036-5807

Sandra K. Williams
Sprint Corporation
P.O. Box 11315
Kansas City, MO 64112

Kathleen Q. Abernathy
David A. Gross
AirTouch Communications
1818 N Street, N.W., Suite 800
Washington, D.C. 20036

Charles D. Cosson
AirTouch Communications
One California Street, 29th Floor
San Francisco, CA 94111


Jacqueline Jenkins